IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7661 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDRAKANT A PANCHAL

Versus

GURUCHARANSINGH OR SUCCESSOR

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Appearance:

1. Special Civil Application No. 7661 of 1988

MR PM THAKKAR for Petitioner

MR R.C. Kodekar,AGP for Respondent authorities

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 21/07/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the

Constitution, the petitioner has prayed to direct the respondents to consider his case for promotion to the post of senior clerk and also to the post of Assistant Government Labour officer by issuing an appropriate writ or order. The petitioner has further prayed to direct the respondents to grant him selection grade as per the order dated 29.10.1983 rendered by the Gujarat Civil Services Tribunal in Appeal Nos. 523, 530 and 531 of 1981.

By an order dated 1.5.1967, the petitioner was appointed as clerk-cum-typist. Next avenue of promotion is senior clerk and according to the petitioner, the criterion for promotion is seniority-cum- fitness. The grievance of the petitioner was that his case for promotion to the post of senior clerk was not considered and juniors to him were promoted to the said post. A senior clerk can be promoted to the post of Assistant Government Labour Officer and,therefore, further claim advanced by the petitioner was that his case should have been considered for promotion to the post of Assistant Government Labour Officer. By an order dated 26.8.1981, five increments of the petitioner were withheld with future effect on the ground that the petitioner's wife and the petitioner's father were running a partnership firm in which the petitioner had a share and such activity amounted to misconduct under the provisions of the Gujarat Government Service (Conduct) Rules, Against the order dated 25,8.1981, the petitioner had approached the Gujarat Civil Services Tribunal by filing three appeals. The Tribunal vide order dated 29.10.1983 set aside the order dated 25.8.1981 and directed the respondents to hold de novo inquiry. Accordingly, de novo inquiry was held and penalty of withholding of increments was imposed which was challenged by the petitioner in other appeal before the Tribunal. The Tribunal had set aside the said punishment and directed the respondents to consider the case of the petitioner for grant of selection grade on or after 15.3.1985 if selection grade post was available. The petitioner as per his case was not granted benefit of the said order. Under the circumstances, the petitioner has filed the present petition and claimed relief to which reference is made earlier.

Mr. J.R.Gor, Administrative Officer from the office of Labour Commissioner has filed a reply affidavit controverting the averments made in the petition. In the reply, it is stated that as there was departmental inquiry against the petitioner since 1978, the petitioner was not promoted to the post of senior clerk. What is emphasised in the affidavit is that under the Gujarat

Labour Department (Conditions of Service) relating to Class III servants Examination (Amendment) Rules, 1983, a clerk-cum-typist can be promoted to the post of senior clerk only on his passing the required examination and as the petitioner passed the said examination held in 1986-87, the petitioner was promoted to the post of senior clerk vide an order dated 13.8.1987.It is further mentioned in the reply that the Tribunal vide an order dated 16.9.1985 ,had directed the respondents to consider the case of the petitioner for grant of selection grade on or after 15.3.1985 if selection grade post was available and considering the case of the petitioner,he was granted selection grade with effect from 15.3.1985. By filing the reply, the deponent of the affidavit has demanded dismissal of the petition.

The contention of the petitioner that he ought to have been promoted to the post of senior clerk earlier has no merits. Rule 3 of the Gujarat Labour Department (Conditions of Service) relating to class III servants' Examination (Amendment) Rules, 1983 stipulates that a person who is appointed as clerk-cum-typist is required to pass departmental examination in the Course-I specified in Appendix B appended to the Rules within a period of three years from the date of his regular appointment as such. Rule 4 further stipulates that to be eligible for promotion to the post of senior clerk, a clerk-cum-typist has to pass examination in the CourseIII specified in Appendix C within a period of six years from the date of his regular appointment. It is an admitted position that the petitioner could pass the said departmental examination only in the year 1986-87 and,therefore,his case for promotion to the post of senior clerk was considered thereafter. The petitioner was promoted to the post of senior clerk vide order dated 13.8.1987.In the circumstances, the claim of the petitioner that he should have been promoted earlier to the post of senior clerk has no substance and cannot be accepted.

So far as grant of benefit of order of Gujarat Civil Services Tribunal is concerned, it is clearly stated in the affidavit in reply that the direction of the Tribunal was considered by the respondents and selection grade was granted to him vide order dated 10.1.1986. The record does not indicate in any way that the order passed by the Tribunal is not complied with.

In view of the above discussion, I do not find any substance in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

( J.M.Panchal, J.)

parekh